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August 27, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA ELECTRONIC FILING

Chairman Michael K. Powell
Federal Communications Commission
445 Twelfth Street, SW, Rm. 8-B201
Washington, DC 20554

**Re: *Ex parte* Letter
Implementation of Sections 309(j) and 337 of the
Communications Act, as amended (WT Docket No. 99-87)**

Dear Chairman Powell:

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") wishes to express its support for the four critical elements outlined in your recent remarks on future spectrum policy initiatives. In particular, the Association is pleased to see the heightened emphasis on improved spectrum efficiency as an integral component in optimizing the use of our finite spectrum resources. AMTA urges the Commission to take advantage of one immediate opportunity to promote this important goal by adopting rules that will accelerate the deployment of more spectrally efficient equipment in the 450-470 MHz spectrum used by the Private Land Mobile Radio ("PLMR") community.

The Commission's "refarming" initiative to introduce more efficient technology into the PLMR bands below 800 MHz began a decade ago.¹ While progress has been made, much remains to be done. Seven years later, in its 1999 Further Notice of Proposed Rule Making in WT Docket No. 99-87, the so-called "Balanced Budget Act" proceeding, the Commission acknowledged that

¹See, Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Report and Order*, 10 FCC Rcd 10,076 (1995).

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the migration to narrowband or other more efficient technologies was not occurring as rapidly as the FCC intended.² The Commission requested input on how better to ensure that result and received substantial comments in support of a more pro-active approach.

The comments revealed a general consensus within the PLMR community that the FCC's reliance on the equipment side of the equation, through the type acceptance process, was not likely to produce the desired result. There also was almost universal support for adoption of a date certain after which licensees no longer would be permitted to operate 25 kHz bandwidth systems on this spectrum, or at least not on a primary basis.³ The industry further urged the Commission not to exacerbate the stranded investment problem by continuing to license new 25 kHz systems, but instead to announce a near term date after which applications for such systems would not be accepted.

It now has been approximately eighteen months since comments were filed in response to the FCC's inquiries. This issue is the single matter under consideration in that proceeding, but to date no action has been taken.⁴ In the meantime, the FCC continues to license new 25 kHz systems and the PLMR user community has evidenced little intention of abandoning its legacy equipment in favor of more advanced technologies for the reasons described in detail in the comments of AMTA and others.

²See *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87, 15 FCC Rcd 22,709 (2000) ("FNPR").

³AMTA also recommended adoption of a more radical 450-470 MHz restructuring approach, one that would permit overlay geographic licensing on the majority of this spectrum. See AMTA Petition for Rulemaking (RM-9705) (filed July 30, 1999). Although the FCC denied that Petition in the FNPR, the Association urges the Commission to revisit the approach outlined in the Petition as it considers how best to promote efficient use of this band.

⁴The FNPR also raised the issue of permitting the conversion to commercial use of 900 MHz Business and Industrial/Land Transportation Pool spectrum, but consideration of that matter subsequently was moved to the pending 800 MHz "rebanding" proceeding. *Notice of Proposed Rule Making*, WT Docket No. 02-55, FCC 02-81 (rel. March 15, 2002). Thus, the question of more efficient operation on the refarmed bands is the sole outstanding issue in the instant proceeding.

The Commission recently reaffirmed the vital importance of a regulatory framework that promotes appropriate levels of spectrum efficiency in its Fifth Report and Order in WT Docket No. 96-86.⁵ In that proceeding, the FCC established a migration path to a 6.25 kHz voice efficiency requirement for public safety systems in the 700 MHz band. Although initial systems in the band may use 12.5 kHz equipment, the FCC has established a date-specific schedule for this migration.

In doing so, the Commission recognized several key points that have at least equal applicability to the refarmed PLMR bands. It acknowledged that, "allowing legacy licensees to continue purchasing 12.5 kHz equipment until the date it becomes illegal to use such equipment would ensure confusion and deprive licensees of a minimum 10-year life cycle for 'pure' 12.5 kHz radios."⁶ The Commission responded to requests that licensees be permitted to continue operating 12.5 kHz systems indefinitely by noting the following:

While we are cognizant that requiring public safety entities to migrate to more spectrally-efficient systems is not a cost-free requirement, we believe that failing to take this step would engender indefinite reliance on 12.5 kHz equipment, defeating the Commission's goal of expeditious development and deployment of spectrum efficient public safety equipment in the 700 MHz band.⁷

Finally, the FCC announced that, "We believe the benefits of adopting a nationwide migration path outweigh the benefits that could be achieved from adopting separate migration paths for rural and urban areas."⁸

The decisions reached by the Commission in that proceeding reflect a difficult reality of spectrum policy making: licensees cannot be permitted to decline to migrate to improved technology when their doing so prevents more efficient spectrum utilization by others. That conclusion, if anything, is even more applicable to the PLMR refarmed bands -- the workhorse spectrum for PLMR use -- in which it is not uncommon for licensees to use equipment that is 20 or even 30 years old.

⁵In the Matter of The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Fifth Report and Order*, WT Docket No. 96-86, FCC 02-216 (rel. Aug. 2, 2002) ("5th R&O").

⁶Id at ¶ 16.

⁷Id at ¶ 17.

⁸Id at ¶ 21.

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AMTA urges the FCC to adopt a decision in this proceeding that will promote the prompt deployment of more efficient technology in the 450-470 MHz PLMR band. The Association would be pleased to work with the Commission in formulating a workable approach to this important matter.

Pursuant to Section 1.1206(b) of the Commission's Rules and Regulations, 47 C.F.R. § 1.1206(b), this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

/s/

Alan R. Shark
President

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Secretary Marlene H. Dortch